

REMARKS

The Office Action dated January 25, 2008 has been received and reviewed. This response, submitted along with Petition for a Three-Month Extension of Time, is directed to that action.

Claims 1, 2, 15 and 19 have been amended, and claims 9, 10, 14, 16-18, 20 and 21 have been cancelled. Support for the claim amendments can be found in claims 14, 16 and 20 as originally filed, and in paragraphs [0054], [0069] and [0073] of the published US application, US 2006/0140901. No new matter has been added.

The applicants respectfully request reconsideration based on the foregoing amendments and the following remarks.

Claim Rejections- 35 U.S.C. §112

The Examiner rejected claims 1-21 under 35 U.S.C. §112, first paragraph because the added limitation "...is immiscible with the first and second phases thereby constituting..." is new matter which is unsupported by the specification. In the interests of advancing prosecution, the applicants have amended claims 1 and 2 to remove this limitation, thus rendering this rejection moot.

Claim Rejections- 35 U.S.C. §103

The Examiner maintained the rejection of claims 1-21 under 35 U.S.C. §103(a) as obvious over Lindauer (US 5,139,864) in view of Benko et al. (US 2003/0091466). The applicants respectfully traverse this rejection.

The presently claimed invention now requires that the third phase is a gel whose volume

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reduces in size when exposed to air. Furthermore, the device of the presently claimed invention only permits the second phase from evaporating once the first phase has substantially completely evaporated, thus allowing some evaporation of the third phase. There is minimal, if any, simultaneous evaporation of the first and second phases in the present invention. This feature completely contrasts with Lindauer, which will initially permit only evaporation of the third phase (foam or gel 101). After a period of time, there will be evaporation of the first phase (perfume particles 107) followed by evaporation of the second phase when the third and first phases have evaporated enough to expose the second phase. Therefore, there will be significant simultaneous evaporation of all three phases for the remainder of the life of the device.

The construction of the presently claimed device is significantly different from, and completely nonobvious to, Lindauer's device. The present invention permits greater control of vaporization release rates of the phases. Lindauer, on the other hand, teaches only a random evaporation of the second phase once it has been slightly exposed by evaporation of the third phase. There is little, if any, control of the rate and distribution of evaporation of the first and second phases after the second phase has been exposed. Accordingly, Lindauer does not suggest that it would have been useful, or even possible, to control vaporization release rates.

Furthermore, Benko merely teaches a layered article in which the first phase layer and the second phase layer are adjacent to each other and have a sealant layer attached to the remote sides of said layers. There is no barrier between the first phase and the second phase. Additionally, while the first phase can be liquid, gel or a combination of the two, the second phase must be a gel or a solid. There is nothing further in this reference that would lead a skilled artisan to modify Lindauer to achieve the present invention.

The differences between the presently claimed invention and Lindauer in view of Benko,
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as described herein, are discernable and significant. There is clearly no suggestion in Lindauer to the skilled artisan to modify Lindauer such that the second phase is only able to evaporate after the first phase has substantially completely evaporated, nor is there any suggestion to modify the construction of the article to control vaporization rates. Simply put, the differences between the presently claimed invention and the prior art are outside the reach of any design driven adaptations.

The differences between the presently claimed invention and Lindauer are too great to be considered "obvious" because they drastically modify the functionality of the device. Lindauer's device is unable to control vaporization release rates such as in the present invention. Indeed, Lindauer merely teaches randomized scattering of the first phase particles within the third phase, wherein one or both will evaporate at a random time interval depending on which of these phases are exposed to the air during evaporation. The second phase also evaporates on a random basis once the mixed first and third phases have randomly evaporated sufficiently to expose the second phase to the air. The present invention, on the other hand, is able to control the vaporization release rates, due the third phase and the partition wall or "limbs". Indeed, they are inventive improvements that were completely unrecognized by the prior art.

Based on the foregoing, the applicants submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw the rejections. Accordingly, the applicants believe the claims are now in condition for allowance, and such favorable action is respectfully requested.

If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

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